

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

| | | |
|----------------------------------|---|-----------------------|
| In re: |) | |
| |) | |
| Dalbey Education Institute, LLC, |) | Case No. 11-32445-SBB |
| Tax ID / EIN: 20-2569612 |) | Chapter 7 |
| |) | |
| Debtor. |) | |

**STIPULATED ORDER OF PERMANENT INJUNCTION AGAINST RMI INC., RMI
ASSOCIATES INC., RECOVERMYINVESTMENT.COM, DAILY DEAL 360 INC.,
RUSSELL BRYANT III AND DAMON SMITH**

The United States Trustee for Region 19, (the “UST”), by and through counsel, and RMI, Inc., RMI Associates Inc., RecoverMyInvestment.com, Daily Deal 360, Inc., Russell Bryant, III, individually and Damon Smith, individually (all entities and individuals collectively referred to herein as “**RMI**”) hereby enter into this stipulated Order signed by the parties. As grounds for entry thereof, the parties agree as follows:

I. PARTIES, JURISDICTION AND VENUE

1. Dalbey Education Institute, LLC, (the “**Debtor**”) filed a voluntary petition for relief under Chapter 7 on September 21, 2011.

2. Dennis King, Esq. is the duly appointed and acting chapter 7 trustee for the above-captioned case.

3. Pursuant to 28 U.S.C. § 586(a)(3), the UST is charged with administrative oversight of the bankruptcy system in this District. Such oversight is part of the UST’s overarching responsibility to enforce the laws as written by Congress and interpreted by the courts. *See United States Trustee v. Columbia Gas Sys. (In re Columbia Gas Systems, Inc.)*, 33 F.3d 294, 295–96 (3d Cir. 1994) (noting that UST has “public interest standing” under 11 U.S.C. § 307 which goes beyond mere pecuniary interest); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990) (describing the UST as a “watchdog”).

4. Under 11 U.S.C. § 307, the UST has standing to be heard on the issues raised by this stipulated Order for Permanent Injunction.

5. The Court has jurisdiction over the subject matter of this proceeding pursuant to 28 U.S.C. §§ 1334(b), 157(a), (b)(1) and 11 U.S.C. § 105.

6. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A),(B), and (O).

7. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1409 because Debtor's bankruptcy case is pending in this district.

II. FACTS RELATING TO RMI'S CONDUCT IN DEBTOR'S BANKRUPTCY CASE

8. Neither RMI nor anyone directly employed by RMI are attorneys licensed to practice law.

9. RMI holds itself out as a business which is "Dedicated to Helping Americans Recoup their investments from Business Scams."

10. RMI is primarily owned and operated by both Russell Bryant, III, individually and Damon Smith, individually.

11. RMI has an internet presence at www.recovermyinvestment.com.

12. RMI has contacted creditors or persons who believe they may recover a claim from the Debtor or from Russ Dalbey.

13. The UST contends that RMI advised purported creditors of the Debtor's case that by filing Proofs of Claim in the bankruptcy, RMI should or would obtain all or the majority of the pre-petition money paid to the Debtor or Russ Dalbey. RMI denies that they guaranteed that they would be able to recover all monies.

14. The Debtor's bankruptcy estate, to date, has approximately \$2,000 on deposit. Dennis King, Debtor's chapter 7 trustee, has not filed a Notice of Possible Dividends which would indicate to creditors that there were funds available to distribute and would also state the deadline to file proofs of claim. The Claims Register for Debtor's case now contains 210 Proofs of Claim which on their face claim a total of over \$3 million.

15. RMI prepared and submitted for filing the almost all the Proofs of Claim filed by individuals.

16. The Proofs of Claim prepared and submitted by RMI may be deficient and may not result in any payment from the Debtor's bankruptcy estate, even if funds were available. The concerns regarding the Proofs of Claim include, but are not limited to, the following:

A. RMI prepared the Proofs of Claim and thereby advised the claimants that an "electronic" signature purporting to be the claimants' signatures would be legally sufficient;

- B. RMI prepared the Proofs of Claim and thereby advised the claimants that submission of the Proofs of Claim without supporting documentation would be legally sufficient;
- C. RMI prepared the Proofs of Claim filed after December 1, 2012, using Form B10 (4/10) and thereby advised that this form was legally sufficient to use rather than Form B10 (12/11).

17. The UST contends that RMI's activities in preparing or assisting in the preparation and filing of Proofs of Claim constitutes impermissibly providing legal advice which may further disadvantage the claimants, especially in light of the payment made by the claimants to RMI for this "service."

III. INJUNCTION AGAINST RMI

18. A creditor that files a proof of claim consents to the jurisdiction of the bankruptcy court. *Telluride Global Dev., LLC v. Bullock* (In re Telluride Global Dev., LLC), 380 B.R. 817, 828 (Bankr. D. Colo. 2007); see also *In re Miramar Resources, Inc.*, 176 B.R. 45, 48 n.2 (Bankr. D. Colo. 1994) ("[A] creditor consents to the equitable jurisdiction of the bankruptcy court when the creditor files . . . a proof of claim. . . . [O]nce the consent is given, the entire proceeding should be treated as a core proceeding.") (citing *Kaiser Steel Corp. v. Frates (In re Kaiser Steel Corp.)*, 95 B.R. 782, 788 (Bankr. D. Colo. 1989)); *Lang v. Lang (In re Lang)*, 293 B.R. 501, 517 (B.A.P. 10th Cir. 2003) (citing *Abramowitz v. Palmer*, 999 F.2d 1274, 1279 (8th Cir. 1993)) for the authority that a bankruptcy court possesses jurisdiction to enter money judgment in a non-core proceeding against a third party).

19. Agents of creditors who purport to act on creditors' behalf in preparing or submitting proofs of claim under the auspices of Fed. R. Bankr. P. 9010, or otherwise, likewise consent to the jurisdiction of the court.

20. Bankruptcy Courts have broad equitable powers to address conduct by parties subject the Court's jurisdiction. These powers are codified in 11 U.S.C. § 105(a), which states:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

21. Indeed, "[i]t is hornbook law that 'actions and conduct excepted from the automatic stay may be subject to specific injunctive relief under § 105(a).'" *In re Western Real Estate Fund, Inc.*, 922 F.2d 592, 599 (10th Cir. 1990) (quoting 2 Collier on Bankruptcy par. 105.02 at 105-6 (15th ed. 1990)). This includes utilizing § 105(a) to enjoin third parties from

actions that would harm or interfere with the bankruptcy case. *Id.*; see also *State Bank v. Gledhill (In re Gledhill)*, 76 F.3d 1070, 1085 (10th Cir. 1996) (noting that it is permissible to apply for injunctive relief in the bankruptcy context pursuant to § 105(a)).

22. In lieu of the UST seeking immediate relief against them, RMI HEREBY AGREES THAT the Court may enter this ORDER pursuant to 11 U.S.C. § 105, setting forth injunctive remedies as more fully set forth below.

23. IT IS FURTHER AGREED THAT RMI, which includes RMI, Inc., Russell Bryant, Damon Smith, RMI Associates Inc., RecoverMyInvestment.com and Daily Deal 360 Inc., by signing this agreed Order, STIPULATES: a) that the Court has jurisdiction over this matter and over them, for all purposes relating to the entry of this Order and as to any proceedings related to interpretation and enforcement of this Order; b) that they have either consulted with their attorney regarding the legal effect that the Order will have regarding the inability to conduct business as set forth herein or have voluntarily chosen not to seek or obtain such counsel; c) that they are stipulating to the relief set forth herein voluntarily and understand the legal effect of this Order; and d) that the matters set forth above are true and correct.

24. IT IS FURTHER AGREED THAT the UST reserves all further rights and remedies available against RMI (which includes RMI, Inc., Russell Bryant, Damon Smith, RMI Associates Inc., RecoverMyInvestment.com and Daily Deal 360 Inc.), which shall not be limited or otherwise impaired by the entry of this Order.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED THAT pursuant to 11 U.S.C. §105, RMI (which includes RMI, Inc., Russell Bryant, Damon Smith, RMI Associates Inc., RecoverMyInvestment.com and Daily Deal 360 Inc.) and their agents, successor or assigns (including any entity owned or controlled by any of them – whether now or in the future) are hereby PERMANENTLY ENJOINED, from directly or indirectly:

- A. Soliciting or accepting payment for services of any kind in connection with assisting persons or entities in filing proofs of claim or in seeking any distribution from the estate in the above-captioned case, Dalbey Education Institute, LLC, Case No. 11-32445 in the United States Bankruptcy Court for the District of Colorado, or any other case in the Bankruptcy Court for the District of Colorado.
- B. Preparing, filing or submitting to the Clerk of the Court any proof of claim or any other document seeking any distribution from the estate in the above-captioned case, Dalbey Education Institute, LLC, Case No. 11-32445 in the United States Bankruptcy Court for the District of Colorado, or any other case in the Bankruptcy Court for the District of Colorado.
- C. Advertising, selling, marketing, displaying, or making any other offer or representation indicating authorization to act as agents for creditors (real, purported, or otherwise) to file any proof of claim or any other document in the

above-captioned case, Dalbey Education Institute, LLC, Case No. 11-32445 in the United States Bankruptcy Court for the District of Colorado, or any other case in the Bankruptcy Court for the District of Colorado.

- D. Consulting, advising or assisting any person or entity in how to prepare proofs of claim or any other document to be filed in the above-captioned case, Dalbey Education Institute, LLC, Case No. 11-32445 in the United States Bankruptcy Court for the District of Colorado, or any other case in the Bankruptcy Court for the District of Colorado.

All of injunctive orders are referred to herein as "Injunction." Notwithstanding anything otherwise provided herein, this Injunction prohibits the above described conduct, regardless of whether any service or product is provided for a fee, barter, trade or for free.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT in the event that RMI (which includes RMI, Inc., Russell Bryant, Damon Smith, RMI Associates Inc., RecoverMyInvestment.com and Daily Deal 360 Inc.) is found to have violated the Injunction, in addition to any other remedies, they shall be fined \$500 per day until such time as they cease their violation of the Injunction, and any party seeking to enforce this Injunction shall be entitled to recover from either or both of them any reasonable and necessary attorneys fees incurred in connection with enforcing this Order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT RMI (which includes RMI, Inc., Russell Bryant, Damon Smith, RMI Associates Inc., RecoverMyInvestment.com and Daily Deal 360 Inc.) has been advised and admonished that further sanctions and remedies may be assessed and ordered against RMI should RMI fail to abide by this Order.

IT IS SO ORDERED.

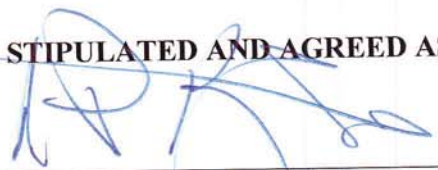
BY THE COURT:

Dated: February 10, 2012




Sidney B. Brooks
United States Bankruptcy Judge

~~STIPULATED AND AGREED AS TO FORM AND SUBSTANCE BY:~~



Russell Bryant, III, as principal for:
RMI, Inc., RMI Associates Inc., RecoverMyInvestment.com, Daily Deal 360, Inc.

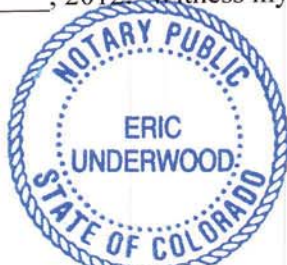
AND



Russell Bryant, III, Individually

Sworn and subscribed to before me by Russell Bryant, III, on this 3rd day of February, 2012. Witness my hand and official seal.


Seal






Notary

AND



Damon Smith, as principal for:
RMI, Inc., RMI Associates Inc., RecoverMyInvestment.com, Daily Deal 360, Inc.

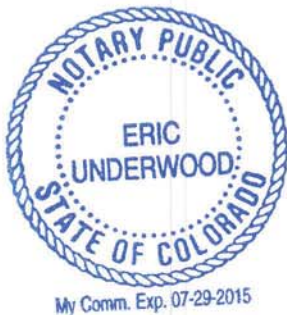
AND



Damon Smith, Individually

Sworn and subscribed to before me by Damon Smith, on this 5th day of February, 2012. Witness my hand and official seal.

Seal





Notary

Dated: January 30, 2012

RICHARD A. WIELAND
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